

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Second Appeal No.743 of 1986**

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Sudhan Chandra Guha adopted son of late Upendra Chandra Guha, resident of village Chautarwa refugee colony P.O. Patilar P.S. Chautarwa, West Champaran

.... ....Plaintiff/Respondent/Appellant/s

Versus

1. The State of Bihar through the Collector of West Champaran, P.O. and P.S. Bettiah, West Champaran
2. The Rehabilitation Officer, Refugee Rehabilitation Department having its office at Bettiah, West Champaran

.... ....Defendants/Appellants/Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Narmdeshwar Jha  
Mr. Vijay Kumar Singh No.7  
Mr. Aditya Nath Jha  
Mr. Ravi Shankar Sahay

For the Respondent/s : Mr. D. K. Sinha, AAG 2  
Mr. Pramod Kumar Sinha, A.C. to AAG 2


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**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL**  
**ORAL JUDGMENT**  
**Date: 11-09-2014**

Heard learned counsel for the appellant and Mr. D. K. Sinha,  
learned AAG 2 for the State.

The plaintiff of Title Suit No. 44 of 1983 has filed the present appeal assailing the judgment and decree dated 21.08.1986 and 04.09.1986 respectively passed by the 1<sup>st</sup> Addl. District Judge, Bettiah in T.A. No. 24 of 1984/03 of 1986 reversing the judgment and decree dated 26.07.1984 respectively passed by the Munsif Bettiah in Title Suit No 44 of 1983.

The plaintiff filed the suit seeking a declaration that he is



the adopted son of Late Upendar Chandra Guha. A further prayer was made for grant of permanent injunction restraining the defendant State from holding out threats to the plaintiff from withdrawing the recognition of the plaintiff as adopted son. On a consideration of the evidence adduced on behalf of the parties, the trial court held that the plaintiff has been able to prove the story of adoption. Having held so, the trial court also granted the plaintiff the relief of permanent injunction restraining the defendant State from de-recognizing the plaintiff as the adopted son of Late Upendra Chandra Guha & Shushma Bala. Aggrieved thereby the defendant State of Bihar filed appeal vide T.A. No. 24 of 1984/03 of 1986. The appellate court on re-appraisal of evidence on record found that the learned Munsif where the suit was filed lacked territorial jurisdiction. Entire cause of action had arisen within the territorial jurisdiction of the Munsifi, Bagaha whereas the suit was filed in the court of Munsif, Bettiah The suit as such was held not maintainable in the trial court. The Appellate court thereafter further examined/evaluated the evidence on record to consider the correctness of other findings recorded by the learned trial court. Having appreciated the evidence on record and for the reasons recorded therefor the appellate court held that the suit as preferred by the plaintiff appellant was also barred by section 34 of the Specific Relief Act. The appellate court did not stop here &

further considered the findings recorded by the learned trial court on the correctness of the deed of adoption and reversed the findings of the learned trial court whereby the deed of adoption was held proved and accepted as valid document/deed. Aggrieved thereby the plaintiff has filed the present appeal.

While admitting the appeal, this Court formulated the following substantial question of law:-

“Whether after holding that the trial court had no territorial jurisdiction to entertain the suit the court below acted illegally in deciding the suit on merit?”

Learned counsel for the appellant has contended that once the appellate court found that the suit was filed before the wrong forum then it was wholly unjust on the part of the learned lower appellate court to decide other issues since in view of the aforesaid findings the suit itself was not maintainable before the learned trial court. In the light of the aforesaid, the appellate court ought to have observed/held that the other findings of the trial court had become redundant. It has been contended that those findings of the appellate court would stare at the face of the plaintiff in filing the appropriate suit before the court of competent jurisdiction.

Per contra, Mr. D. K. Sinha, learned counsel for the State has

submitted that if the parties press all points/issues the court is obliged to answer other issues/points involved in the appeal for adjudication as required under Order 41, Rule 24 and 33 CPC.

I have considered the rival submissions of the parties.

On bare perusal of the judgment under appeal this Court finds that the appellate court having considered the pleadings made in the plaint and evidence adduced in support thereof came to a clear conclusion that the suit was filed before the wrong forum/court. The entire cause of action had arisen within the territorial jurisdiction of the court of competent jurisdiction at Bagaha whereas the suit was filed in the court of learned Munsif, Bettiah. Having found and held so the appellate court further proceeded to examine the other contention made by the parties and recoded findings adverse to the claim/case of the plaintiff. Learned counsel for the appellant has made an attempt to assail the aforesaid finding of the appellate court that the suit as framed suffered from territorial jurisdiction. In view of the substantial question of law framed in this appeal, this Court is unable to consider those submissions. This Court would proceed on the assumption that the said finding of the learned lower appellate court on lack of territorial jurisdiction of the trial court is no longer in dispute. Now the question is if in the opinion of the learned lower appellate court the suit itself was not maintainable on account of lack

of territorial jurisdiction whether it was necessary to adjudicate on real question in dispute and record the findings either approving or disapproving the findings of the trial court on these material issues. If the said finding of the learned lower appellate court is accepted as no longer in dispute then the plaintiff was required to file the suit, if so advised, before the appropriate court for adjudication of his claim. In that event other findings recorded by the learned lower appellate court would stare at the face of the plaintiff and he would be left in a perilous position. It would be an unjust position for the plaintiff. No party should be put to any prejudicial position on account of any act of the court.

Keeping in focus the aforesaid aspect of the matter this Court while answering the substantial question of law framed in the appeal in favour of the appellant allows the appeal and the findings recorded by the learned lower appellate court in paragraph 5,6,7 & 8 are set aside. The suit is accordingly dismissed.

No cost(s).

**(Kishore Kumar Mandal, J)**

HR/-

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